

ST 96-53

Tax Type: SALES TAX

Issue: Exemption From Tax (Charitable or Other Exempt Type)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

TAXPAYER,)	CLAIM FOR EXEMPTION
)	
Taxpayer.)	Case No.
)	
v.)	
)	
THE DEPARTMENT OF REVENUE)	John E. White,
OF THE STATE OF ILLINOIS,)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearance: Alan J. Feder, Chicago, for Taxpayer.

Synopsis:

In November, 1995, the TAXPAYER ("taxpayer" or "TAXPAYER") wrote to the Illinois Department of Revenue ("Department") to request that it be issued a tax exempt number. Persons having such a tax exempt number are able to purchase tangible personal property at retail tax free, that is, without paying the statutory amount of Illinois use tax, which is calculated as a percentage of the selling price of the tangible personal property purchased. The Department denied taxpayer's application, and taxpayer protested that denial.

A hearing on taxpayer's protest was held at the Department's Office of Administrative Hearings. Taxpayer presented evidence consisting of its books and records, and the testimony of taxpayer's regional commissioner. The issue at hearing was whether taxpayer is an exclusively charitable organization. I am including in the

recommendation findings of fact and conclusions of law. I recommend the issue be resolved in favor of the Department.

Findings of Fact:

1. Taxpayer is an Illinois not-for-profit corporation. See Taxpayer Group Ex. No. 2,¹ 1995 Annual Report to Illinois Secretary of State ("ISOS") Certificate (attachment 3).
2. Taxpayer's activities are controlled by its parent, the United States Volleyball Association ("USVBA"). Taxpayer Group Ex. No. 2, Application for Recognition of Exemption Under Section

¹. Taxpayer Group Ex. No. 2 consists of taxpayer's letter of application for exemption, dated 11/27/95, and the following attachments:

Attachment #

- 1: Articles of Incorporation for USVBA (partial) (1 p.)
- 2: Bylaws of USVBA (partial) (5 pp.)
- 3: Taxpayer's 1995 Annual Report (1 p.)
- 4: Illinois Secretary of State ("ISOS") Certificate, dated 1/21/88 (1 p.); and Application for reinstatement, dated 1/13/88 (2 pp.)
- 5: ISOS Certificate, dated 1/19/94 (1 p.); and Articles of Amendment, 1/12/94 (3 pp.)
- 6: Bylaws of TAXPAYER Region of USVBA (12 pp.)
- 7: 501(c)(3) letter from IRS to taxpayer, dated 5/9/94 (3 pp.)
- 8: Taxpayer's Financial Statements for 1/1/95 - 8/31/95 (9 pp.)
- 9: Taxpayer's federal form 1023 (Application for Recognition of Exemption), dated 5/1/93
- 10: Attachment 10 consists of seven (7) separate publications by taxpayer, which I have identified for the record as:
 - 10.1: TAXPAYER Region Spring '94 newsletter
 - 10.2: TAXPAYER Region Handbook (rev. 2/89)
 - 10.3: TAXPAYER Region Tournament Director's Handbook (rev. 8/20/92)
 - 10.4: TAXPAYER Region 1991 Junior Handbook
 - 10.5: TAXPAYER Region IMPACT Manual
 - 10.6: TAXPAYER Region 1993 Volleyball camp for girls mailing
 - 10.7: TAXPAYER Region 1993 Volleyball camp for boys mailing

501(c)(3) of the Internal Revenue Code ("Form 1023") (attachment 9), p. 3.

3. The USVBA is a California non-profit corporation and is the national governing body of volleyball. It is a charter member of the Federation Internationale de Volley Ball (FIVB) and a member of the United States Olympic Committee. Taxpayer Group Ex. No. 2, Articles of Incorporation and Bylaws of the USVBA (attachments 1-2, respectively), TAXPAYER Region Handbook (attachment 10.2), unnumbered introduction page.

4. A person who is a member of taxpayer is a member of the USVBA. See Taxpayer Group Ex. No. 2, TAXPAYER Region 1991 Junior Handbook (attachment 10.4), pp. 19-20 (USVBA/TAXPAYER Region membership application form).

5. Taxpayer's regional commissioner described taxpayer as:

a developmental volleyball organization that trains and aides the junior athlete to excel in the sport and be eligible for scholarships for their future, to train officials, educate and train coaches, and supervise the program for all age levels.

Hearing Transcript ("Tr.") p. 5.

6. In taxpayer's 1995 Annual Report, in response to the request that it provide, "a brief statement of the character of the affairs which the corporation is actually conducting", taxpayer reported, "Conduct officials clinics & rating & promotion of volleyball tournaments for youths and adults." Taxpayer Group Ex. No. 2, 1995 Annual Report (attachment 3).

7. Taxpayer is a membership organization. Taxpayer Group Ex. No. 2, Form 1023 (attachment 9), p. 4, TAXPAYER Region Handbook

(attachment 10.2), p. 10 (schedule of membership dues and benefits of membership).

8. Taxpayer provides distinct benefits to its members, which benefits include:

1. Participation opportunities at all USVBA sanctioned tournaments.
2. A subscription to the TAXPAYER USVBA Regional Newsletter.
3. A subscription to Volleyball USA.
4. A copy of the USVBA Rules Guide.
5. A team copy of the TAXPAYER USVBA Regional Handbook.
6. An insurance policy.

Taxpayer Group Ex. No. 2, TAXPAYER Region Handbook, (attachment 10.2), p. 10 (schedule of membership dues and benefits of adult membership), p. 22 (dues and benefits for Junior Olympic members).

8. In order to play in a tournament sanctioned by the USVBA, each player must be a member of the USVBA and each team must be registered with the USVBA. *E.g.*, Taxpayer Group Ex. No. 2, TAXPAYER Region Handbook, (attachment 10.2), p. 33 (Official Tournament Entry Blank requires that each player's USVBA number be identified when team is registering to participate in USVBA-sanctioned tournament), TAXPAYER Region Tournament Director's Handbook (attachment 10.3), p. 2 ("Tournament Director's [sic] may NOT accept any entries with "applied for" listed under USVBA numbers, without checking with the Registrar."), TAXPAYER Region 1991 Junior Handbook (attachment 10.4), p. 15 (regional guidelines for hosting a junior tournament include ensuring that "[a]ll teams, players, coaches, and officials are registered USVBA members.").

9. Approximately 88% of taxpayer's financial support comes from membership dues. Taxpayer Group Ex. No. 2, Form 1023 (attachment 9), p. 2.
10. In its financial statements, taxpayer is described as having capital stock in the amount of \$1,000.00. Taxpayer Group Ex. No. 2, Financial Statements (attachment 8), p. 5.

Conclusions of Law:

Section 2-5(11) of the Retailers' Occupation Tax Act ("ROTA") provides, in part:

Gross receipts from proceeds from the sale of
the following tangible personal property are
exempt from the tax imposed by this Act:

* * *

(11) Personal property to be sold to a
governmental body, to a corporation, society,
association, foundation, or institution
organized and operated exclusively for
charitable, religious, or educational purposes .

. . .

35 ILCS 120/2-5(11). The complimentary provision is set forth in section 3-5 of the Illinois Use Tax Act ("UTA"), 35 ILCS 105/3-5(3), and provides:

Use of the following tangible personal property
is exempt from the tax imposed by this Act:

* * *

(3) Personal property purchased by a
governmental body, by a corporation, society,
association, foundation, or institution
organized and operated exclusively for
charitable, religious, or educational purposes .

. . .

35 ILCS 105/3-5(3). As statutory provisions exempting transactions or entities from taxation, those sections must be strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). All debatable questions

should be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434 (1st Dist. 1987).

In both property tax matters and ROT/UT matters, Illinois courts apply the same criteria when determining whether a given taxpayer is an exclusively charitable organization. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2d Dist. 1995); see also, Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996) (affirming determination that association was not exclusively charitable because it did not satisfy certain criteria). Those criteria, first articulated by the Illinois Supreme Court in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968), are:

1. Whether the benefits taxpayer provides are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduces the burdens on government;
2. Whether taxpayer's organization has any indices of a for-profit structure, such as capital, stock, or shareholders;
3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;
4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with taxpayer;
5. Whether taxpayer places any obstacles in the way of those seeking benefits from it;
6. The term "exclusively used" means the primary purpose for which the property is used [or for which the organization's benefits are provided] and not any secondary or incidental purpose.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d at 156-57; DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 214 Ill. App. 3d 461, 468 (1st Dist. 1991) (Methodist Old Peoples Home criteria to be used as guidelines, not benchmarks; each need not be "proved" before charitable status recognized).

The Department has promulgated regulations applicable to the criteria described above. See 86 Ill. Admin. Code § 130.2005. For example, section 2005(e) of the Department's regulations describes some organizations generally deemed not to be exclusively charitable in nature. That section provides:

Nonprofit Social, Recreational and Athletic
Organizations -- Nonprofit Fraternal
Organizations.

1) A purchaser is not necessarily qualified for this total exemption as to receipts received by the seller from all sales made to such purchaser merely because of the fact that the purchaser is a not-for-profit service organization. *For example, if the purchaser is incorporated or otherwise organized primarily to provide entertainment, social, recreational or athletic activities or facilities to its members, the purchaser is not organized and operated exclusively for charitable, religious or educational purposes.* Such a purchaser is not organized and operated exclusively for charitable purposes even though it does some charitable work. This is true even though such purchaser is organized and operated as a not-for-profit corporation, association, etc.

2) The same is true of nonprofit fraternal benefit societies which derive their funds from their members and are organized primarily to provide different forms of insurance benefits to their members and to persons standing in designated relationships to their members, except when such fraternal benefit societies are organized under a statutory provision which

expressly declares them to be exclusively charitable organizations.

86 Ill. Admin. Code § 130.2005(e) (emphasis added).

Additionally, subsection 2005(i) of the Department's charitable rules provides, in part:

Other Conditions Necessary for Being Exclusively Charitable

1) *In the case of a corporation, there can be no capital structure nor capital stock, no provision for disbursing dividends or other profits and no payment of director's fees if the corporation seeks to qualify as an exclusively charitable corporation.*

86 Ill. Admin. Code § 130.2005(i) (emphasis added).

When viewed against the Methodist Old Peoples Home criteria, the evidence taxpayer introduced at hearing shows that taxpayer is neither organized nor operated as an exclusively charitable organization. Taxpayer is not organized as an exclusively charitable corporation because it has capital stock. Taxpayer Group Ex. No. 2, Financial Statements (attachment 8), p. 5. Moreover, taxpayer's operations do not serve an exclusively charitable purpose.² Taxpayer's operations do not benefit the general public or in some way reduce the burdens on government. At least, taxpayer failed to point out how taxpayer's operations served the public or reduced burdens on Illinois government.

². I find the specific purposes set forth in the USVBA's articles of incorporation the better description of taxpayer's activities than the vague (and conclusory) amendment to taxpayer's articles of incorporation. Compare Taxpayer Group Ex. No. 2, Articles of Incorporation for USVBA (attachment 1) with Articles of Amendment, dated 1/12/94 (attachment 5); see also Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (wording of legal documents declaring intent to use property exclusively for charitable purposes does not relieve the institution from showing that its property actually and factually is so used).

Taxpayer is not operated as an exclusively charitable organization because it is operated as a membership organization. See Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 272 (organization that derived income mainly from member dues and served primarily to benefit members was not a charitable organization). Taxpayer does not derive its funding mainly through public or private charity. Taxpayer is funded, primarily, by the dues its members pay, and its members are the primary beneficiaries of the organization's activities.

As of February 1989, taxpayer collected \$25.00 in dues from each individual adult member, and dues for individual junior members were \$20.00. Assuming most members join taxpayer's organization to play, rather than to read about, competitive volleyball, the most consumptively valuable benefit taxpayer provides to its members is the opportunity to participate (as players, coaches or in other roles) in volleyball tournaments with other USVBA members. Since no one could enter or actively participate in any volleyball tournament sanctioned by taxpayer (or its parent organization) without becoming a member of the USVBA, taxpayer's members directly profited through their association with taxpayer in a way nonmembers could not. See People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 452-53 (1970) (determining feature of "profit" with respect to a charitable institution is whether there is an inurement of benefit to private individuals); DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901 (2d Dist. 1988) (benefit inuring to members of association that is not available to nonmembers is "profit").

Taxpayer's members paid to play competitively, and it's obviously the play that counted to taxpayer's -- and other USVBA -- members. Moreover, and while the dues are not significant in amount, they are a financial obstacle placed before those wishing to take part in taxpayer's activities. I saw no evidence in taxpayer's books and records indicating that membership dues could be (or were) waived in cases of financial hardship. See, e.g., Taxpayer Group Ex. No. 2, TAXPAYER Handbook (attachment 10.2); see also, Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995) ("Charging fees and rendering benefits to persons not-poverty stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits persons who need and seek the benefits offered but are unable to pay.") (citing Small v. Pangle, 60 Ill. 2d 510, 518 (1975)).

I conclude that taxpayer has not satisfied any of the Methodist Old Peoples Home criteria. Therefore, I recommend that the Director finalize the Department's denial of Taxpayer's application for exemption.

Date

John E. White